

APPEAL NO. 023043  
FILED JANUARY 9, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on November 14, 2002. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the 16th and 17th quarters.

The claimant appeals, asserting that the dates of the qualifying period are "incorrect," and that if the correct dates are used (dates approximately two weeks different than were stipulated) he looked for work each week of the respective qualifying periods. The respondent (carrier) responds, asserting that the qualifying dates were properly calculated and that the claimant's stipulations to the dates are final and binding. The carrier requests affirmance.

DECISION

Affirmed.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative rule requirements for SIBs. At issue in this case is whether the claimant met the good faith job search requirements of Section 408.142(a)(4) by meeting the requirements of Rule 130.102(e). The hearing officer's determination on the direct result requirement has not been appealed.

The SIBs criterion in issue is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the relevant qualifying periods of the 16th and 17th quarters. Rule 130.102(e) provides, in pertinent part, that except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search effort. In this case the parties stipulated on the record that the qualifying period for the 16th quarter was from February 6 through May 7, 2002, and for the 17th quarter the qualifying period was from May 8 through August 6, 2002. We also note that in the claimant's opening statement (given by the ombudsman), the claimant's testimony, and in the closing statements, the claimant asserted that the qualifying periods were those to which the parties had stipulated. The claimant's Application for [SIBs] (TWCC-52) documented 13 job contacts during the 16th quarter qualifying period and 20 job contacts during the 17th quarter qualifying period. The carrier, in its closing argument, pointed out that no job contacts were documented during 4 weeks of the 16th quarter qualifying period and 1 week of the 17th quarter qualifying period.

The claimant, for the first time on appeal, asserts that the stipulated qualifying periods are "incorrect" (a fact not borne out by our review of the record). Rule

130.101(4) provides that the qualifying period ends on the 14th day before the beginning date of the quarter and consists of the 13 previous consecutive weeks. Our review of the dates of the qualifying periods indicates that they were correctly calculated. The claimant perhaps forgot that the qualifying period ends 14 days before the beginning date of the quarter. Further, Section 410.166 provides that an oral stipulation preserved in the record is final and binding. The claimant's objection to the dates of the respective qualifying periods has not been preserved for appeal.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL  
DALLAS, TEXAS 75201.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

CONCURRING OPINION:

I concur because the qualifying periods that were stipulated to were in fact the correct qualifying periods under Rule 130.101(4)

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Robert W. Potts  
Appeals Judge